IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 545 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MADHUBHAI AMRABHAI VEDVA- WAGHRI

Versus

STATE OF GUJARAT

Appearance:

MR PUSHPAK VYAS for Petitioner

MR AJ DESAI, Learned APP for Respondent No. 1

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 11/01/2001

ORAL JUDGEMENT

1. Madhubhai Amrabhai Vedva-Waghri, petitioner original accused has challenged the order dated 6th December, 2000 passed by the Additional Sessions Judge, Vadodara in Criminal Appeal No.24 of 1998, wherein the learned Judge was pleased to dismiss the appeal. The learned Judge, thereby confirmed the sentence passed under section 51-B of Prisons Act passed by learned J.M.F.C., 2nd Court, Vadodara. Thereby, the learned Judge was pleased to confirm the judgment and order dated 30th March, 1999 passed by learned J.M.F.C., 2nd Court, Vadodara, wherein the learned Judge has passed the sentence of six months under section 51-B of the Prisons Act.

2. The facts giving rise to this application are as under :-

2:1 The applicant has been prosecuted for the offence under section 395 of the Indian Penal Code (in the case registered at Anand Police Station bearing CR no.I 521 of 1992). After considering the evidence of the prosecution, the learned Additional Sessions Judge, Nadiad, by his order dated 28th September, 1995 convicted the applicant and sentenced him to undergo rigorous imprisonment for 5 years and to pay a fine of Rs.1,000/(Rupees One Thousand Only) in default to undergo rigorous imprisonment for one month.

2:2 Pursuant to the aforesaid order, the applicant was in Baroda Central Prison. At that time the applicant approached the Hon'ble Court by way of filing Criminal Misc. Application No.337 of 1996 and the Hon'ble Court granted 10 days parole to the applicant. The applicant was required to surrender on 9th April, 1996. However, the applicant absconded and surrendered before the Jail Authorities after 300 days.

2:3 In view of the same, Vadodara Police registered Criminal Case against the applicant under section 51-B of the Prisons Act, 1961. Section 51-B which provides criminal liability for breach of conditions of suspensions of sentence, etc. Section 51-B reads as follows :-

Section 51-B - Criminal Liability for breach of conditions of suspension of sentence

"(1) If any prisoner fails without sufficient cause to observe any of the conditions on or

subject to which his sentence was suspended or remitted, or release on parole or furlough was granted to him, he shall, on conviction, be punished (such punishment being in addition to any punishment which such prisoner was undergoing when he committed such offence) with imprisonment for a term which may extend to two years or with fine which may extend to one thousand rupees, or with both.

(2) No Court shall take cognizance of an offence under this section except with the previous sanction of the State Government or the authority which granted suspension or remission of the sentence."

3. In view of the aforesaid facts and circumstances of the case, the chargesheet was submitted against the applicant before the learned Judge, J.M.F.C., 2nd Court, Vadodara and learned Judge, J.M.F.C., 2nd Court, Vadodara by his judgment and order dated 30th March, 1999 convicted the applicant for the said offence (for late surrender 300 days) and sentence him to undergo sentence imprisonment for six months.

4. Being aggrieved and dissatisfied the aforesaid judgment and order, the applicant preferred Criminal Appeal No.24 of 1998 before the learned Additional Sessions Judge, Vadodara. The learned Additional Sessions Judge, by his order dated 6th December, 2000 was pleased to reject the said appeal.

5. Being aggrieved and dissatisfied the aforesaid judgment and order for dismissing the appeal, the applicant has preferred this Criminal Revision Application No.545 of 2000 before this Court.

6. Mr.P.J. Vyas, learned counsel for the petitioner has submitted that in the facts and circumstances of the case, though petitioner has committed an offence, but the offence imposed upon him is excessive and disproportionate to the offence committed by him. The learned counsel for the petitioner has also submitted that the learned Judge has not considered the provisions of section 155 of the Code of the Criminal Procedure as directive instead of mandatory.

7. On the other hand, Mr.A. J. Desai, learned APP on behalf of the opponent has submitted that even if there is breach of section 155(2) of the Code of Criminal Procedure. The trial cannot be vitiated. In the absence

of such type of permission, at the most, it can be said irregularity in trial. He has also relied upon the judgment of Madras High Court in 1983 Criminal Law Journal, NOC 94 and submitted that in the absence of necessary permission, the trial cannot be vitiated.

8. I have gone through the judgment and order of the learned Judge, J.M.F.C., Vadodara as well as the judgment and order of the learned Additional Sessions Judge, Vadodara, the reasons given by both the lower Courts are cogent and convincing, as the applicant had remained outside from the Jail Authorities for 300 days. Without showing any sufficient cause and, therefore, the offence under section 51-B has been completed in this behalf.

9. The learned counsel for the applicant has stated that in this case, the applicant has been already in the Jail for 35 days and in any way of the matter, the imprisonment of six months is excessive and disproportionate to the offence alleged against the applicant.

10. Without deciding the merits of the matter. In view of the peculiar facts and circumstances of the case, on the ground that the age of the accused is 40 years already convicted for the sentence is over and this is therefore, I confirm both the orders of Lower Court as well as Appellate Court for dismissing the appeal. As regards the sentence which was imposed of six months, I reduce the same to three months. Rule is made absolute. Direct service is permitted.

(K. M. Mehta, J.)

(vrp)*